

THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN THE ARIZONA TAX COURT

TX 2013-000606

09/27/2016

HONORABLE CHRISTOPHER WHITTEN

CLERK OF THE COURT

T. Cooley

Deputy

LOMA MARIPOSA LIMITED PARTNERSHIP

DOUGLAS S JOHN

v.

SANTA CRUZ COUNTY, et al.

ROBERTA S LIVESAY

MINUTE ENTRY

The Court has considered Plaintiff's Rule 54(g) Amended Motion for Award of Attorneys' Fees and Other Expenses filed June 28, 2016, Defendant's Response in Opposition to Plaintiff's Rule 54(g) Amended Motion for Award of Attorneys' Fees and Other Expenses, filed July 25, 2016, and the Plaintiff's Amended Reply in Support of Plaintiff's Rule 54(g) Amended Motion for Award of Attorneys' Fees and Other Expenses, filed August 8, 2016. Oral argument on the motion was not requested or necessary.

Plaintiff's application does not conform to A.R.S. § 12-348(E): "The court shall base any award of fees as provided in this section on prevailing market rates for the kind and quality of the services furnished." Mr. John's amended *China Doll* affidavit does not state that his own services command a prevailing market rate of \$400 per hour, or that the services of Mr. Kuter, Ms. Alexander, Ms. Koerber, and Ms. Romine command a prevailing market rate of \$275, \$265, \$150, and \$175 per hour respectively. Rather, it bases their entitlement to those fees on their success in obtaining a remunerative judgment. The statutory language does not permit the Court to award fees on that basis.

In addition, the Court takes judicial notice that the Frazer, Ryan, Goldberg & Arnold law firm has represented several taxpayers before the Tax Court in essentially identical litigation against Santa Cruz County. *In re Sabino R.*, 198 Ariz. 424, 425 ¶ 4 (App. 2000) (court may take judicial notice of its own records, even if not asked to do so). In this situation, recovery is

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limited to the incremental increase in fees related to the representation of each party. *Aileen H. Char Life Interest v. Maricopa County*, 208 Ariz. 286, 300 ¶ 46 (2004). The Supreme Court explained:

When the same attorney represents multiple plaintiffs, therefore, recovery is limited to the incremental increase in fees related to the representation of each additional plaintiff, because only that incremental increase in effort reflects time spent *on behalf of that party*. Thus, if the reasonable attorney fee associated with establishing the claim of the first of multiple plaintiffs is \$50,000.00, that party can recover \$30,000.00, but the additional portion of the fee does not 'roll over' to the second plaintiff represented. Rather, that party must establish the additional reasonable attorney fee associated with the representation of the second party. In many actions, the incremental increase will be relatively small; in others, such as actions in which establishing the damages of each party requires complex calculations, the incremental increase may be relatively large. In all instances, the prevailing party must establish the amount of reasonable attorney fees.

Id.

Here, the additional effort required to litigate the later cases was negligible, amounting to little more than changing the caption on the pleadings and motions. Therefore, *Aileen H. Char* does not permit the award of full fees for each litigant. How the allowable fees are to be allocated among the various clients is for counsel to work out with them. Accordingly,

IT IS ORDERED denying Plaintiff's Rule 54(g) Amended Motion for Award of Attorneys' Fees and Other Expenses filed June 28, 2016.